

US-09-788-626-4
; Sequence 4, Application US/09788626
; Patent No. US2002009762A1
; GENERAL INFORMATION:
; APPLICANT: Flint, Andrew J.
; APPLICANT: Cool, Deborah E.
; TITLE OF INVENTION: IMPROVED ASSAY FOR PROTEIN TYROSINE
; TITLE OF INVENTION: PHOSPHATES
; FILE REFERENCE: 200125.401
; CURRENT APPLICATION NUMBER: US/09/788,626
; CURRENT FILING DATE: 2001-02-13
; NUMBER OF SEQ ID NOS: 40
; SOFTWARE: FastSeq for Windows Version 4.0
; SEQ ID NO 4
; LENGTH: 317
; TYPE: PRT
; ORGANISM: Homo sapiens
US-09-788-626-4

Query Match 2.7%; Score 11; DB 9; Length 317;
Best Local Similarity 100.0%; Pred.No. 0.041;
Matches 11; Conservative 0; Mismatches 0; Indels 0; Gaps 0;

OY 357 VHCAGVGRTG 367
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Db 192 VHCAGVGRTG 202

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Office Action Summary

Application No.

09/923,552

Applicant(s)

MCMEEKIN ET AL.

Examiner

Robert M. Joynes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) 2, 5, 6, 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,3,4,7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of applicants' Amendment and Response filed on April 5, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 4, 7, 9-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over RD 382014 A (February 1996) in combination with Pung et al. (WO 9925318). The RD reference teaches a textured wipe for treating the skin wherein a pattern of texture is applied to a substrate that is relatively non-textured by a hot-melt or plastic printing technique (See abstract provided). Polyolefins, polyesters and ethylene vinyl acetate are used to form the textured pattern. Area coverage, patterns, colors and thickness of the texture can be widely modified. The coverage area ranges from 1% to 100% of the substrate area. The thickness ranges from a few millimeters to 50

millimeters. The texture resins also contain active ingredients or controlled solubility active agents.

The RD reference further does not expressly teach the type of material that composed the substrate.

Pung teaches a cleansing wipe made from a single-layer, non-woven substrate (Page 2, line 72 – Page 5, line 173). The average basis weight of the substrate is from about 40 to 90 grams per square meter (Page 5, lines 164-173).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to choose a suitable substrate for producing a textured cleansing cloth.

One of ordinary skill in the art would have been motivated to do this to provide a sturdy yet flexible cloth that is suitable for the various parts of the body the cloth could be used for (e.g., the hair, the face, the feet, the torso).

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

The RD reference does not expressly teach the same exact surface area coverage range. The RD reference does not teach the specific shapes of the raised elements on the wipe. The RD reference further does not expressly teach the diameters of the raised texture.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to change the particular surface area of the substrate that is covered by the texture resin. It also would have been obvious to a person of ordinary

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skill in the art to employ various shapes and diameter sizes. There is no criticality seen in applicants' claimed shapes and diameter sizes.

One of ordinary skill in the art would have been motivated to do this to provide various patterns and shapes, to provide more or less abrasive material to clean the skin as well as to provide for an aesthetic purpose.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over RD382014 A (February 1996) in combination with Pung et al. (WO 9925318) in further combination with Thomas et al. (US 5116563). The teachings of the RD reference and Pung are discussed above. The RD reference does not expressly teach that specific hot-melt technique for producing the raised texture pattern. The RD reference does teach that the Thomas reference discloses the suitable hot-melt techniques. Pung teaches the suitable materials for the substrate.

Thomas teaches one suitable hot-melt technique to be the gravure printing technique (Col. 5, lines 5-33).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to implement various hot-melt techniques for producing the textured pattern for the cleansing wipe comprising various substrates.

One of ordinary skill in the art would have been motivated to do this based on availability and expense of the equipment used for such a technique.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

Applicants' arguments filed on April 5, 2004 have been fully considered but are found not persuasive. Applicants argue that the prior art fails to teach or suggest a dry textured substrate that contains raised elements in a shape selected from the group consisting of circular dots, hexagons, hearts, diamonds, reactangles, stars and triangles.

The prior art of record teaches a substrate that includes raised elements. The RD reference states that a variety of micro-texture structures can be employed. The reference further gives examples of scoop shapes, loop shapes or M shapes but states that a large variety of other shapes are possible. Therefore, it is the position of the Examiner that the any shape could be employed on the substrate to achieve the same expected result. The shape of the raised elements is a limitation that would be routinely determined by one of ordinary skill in the art, through minimal experimentation, as being suitable, absent the presentation of some unusual and/ or unexpected results. The results must be those that accrue from the specific limitations.

Further, the RD reference teaches that the composition can contain an active agent. Therefore, the RD reference teaches or suggests a wipe with texture on one side that has an active agent included in the composition. The new limitations recited in the instant claims do not impart any distinction over the prior art and therefore are rendered obvious over the prior art. In addition, the Pung reference teaches a cleansing

wipe that contains a skin care composition impregnated on the wipe (See Claims 1-7). Therefore, The RD reference alone or in combination with Pung would suggest a texture wipe with a skin care composition loaded on the substrate. Again, the new limitations do not distinguish the instant claims over the prior art and are rendered obvious in view of the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Joynes whose telephone number is (571)

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272-0597. The examiner can normally be reached on Mon.-Thurs. 8:30 - 6:00, alternate Fri. 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert M. Joynes
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